

§ 70.170

with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

§ 70.170 Application of proceeds of levy.

(a) *Collection of liability.* Any money realized by proceedings under 26 U.S.C. 6331 through 6344, or by sale of property redeemed by the United States (if the interest of the United States in the property was a lien arising under the provisions of 26 U.S.C. enforced and administered by the Bureau), is applied in the manner specified in paragraphs (a)(1), (2), and (3) of this section. Money realized by proceedings under 26 U.S.C. 6331 through 6344, includes money realized by seizure, by sale of seized property, or by surrender under 26 U.S.C. 6332 except money realized by the imposition of a 50 percent penalty pursuant to 26 U.S.C. 6332(d)(2)).

(1) *Expense of levy and sale.* First, against the expenses of the proceedings or sale, including expenses allowable under 26 U.S.C. 6341 and amounts paid by the United States to redeem property.

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any provision of 26 U.S.C. which has not been paid, the amount remaining after applying paragraph (a)(1) of this section, shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed):

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying paragraphs (a)(1) and (2) of this section, shall then be applied against the liability in respect of which the levy was made or the sale of redeemed property was conducted.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Chief, Tax Processing Center to the person or persons legally entitled thereto. The delinquent tax-

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payer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

(26 U.S.C. 6342)

DISPOSITION OF PROPERTY

SOURCE: Sections 70.181 through 70.188 added by T.D. ATF-301, 55 FR 47627, Nov. 14, 1990, unless otherwise noted.

§ 70.181 Disposition of seized property.

(a) *Notice of seizure.* As soon as practicable after seizure of property, the ATF officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property) or left at the owner's usual place of abode or business, if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* (1) As soon as practicable after seizure of the property, the regional director (compliance) shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at the owner's usual place of abode or business if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper published in the county wherein the seizure is made or in a newspaper generally circulated

in that county. For example, if a newspaper of general circulation in a county but not published in that county will reach more potential bidders for the property to be sold than a newspaper published within the county, or if there is a newspaper of general circulation within the county but no newspaper published within the county, the regional director (compliance) may cause public notice of the sale to be given in the newspaper of general circulation within the county. If there is no newspaper published or generally circulated in the county, the notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The regional director (compliance) may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in paragraph (b)(1) of this section, when the regional director (compliance) believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in 26 U.S.C. 6331(a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless 26 U.S.C. 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.* The time, place, manner, and conditions of sale of property seized by levy shall be as follows:

(i) *Time and place of sale*—(i) *In general.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under 26 U.S.C. 6335(b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the regional director (compliance) under whose supervision the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, the regional director (compliance) may order that the sale be held in such other place. The sale

shall be held at the time and place stated in the notice of sale.

(ii) *Right to request sale of seized property within 60 days.* The owner of any property seized by levy may request that the regional director (compliance) sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The regional director (compliance) shall comply with such request unless it is determined (and the owner is notified within such period) that such compliance would not be in the best interests of the United States.

(2) *Adjournment of sale.* When it appears to the regional director (compliance) that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the regional director (compliance) may adjourn, or cause the ATF officer conducting the sale to adjourn, the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.* (i) Before the sale of property seized by levy, the regional director (compliance) shall determine:

(A) A minimum price, taking into account the expenses of levy and sale, for which the property shall be sold, and

(B) Whether the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared to be sold to the highest bidder. If no person offers for such property at the sale the amount of the minimum price and the regional director (compliance) has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price. If, at the sale, the property is not declared sold to the highest bidder or the United States, the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property

released to the owner under these circumstances shall remain subject to any lien imposed by 26 U.S.C. chapter 64, subchapter C.

(ii) The ATF officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property*—(i) *Sale of indivisible property*. If any property levied upon is not divisible, so as to enable the regional director (compliance) by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see 26 U.S.C. 6342(b).

(ii) *Separately, in groups, or in the aggregate*. The seized property may be offered for sale:

- (A) As separate items, or
- (B) As groups of items, or
- (C) In the aggregate, or

(D) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The regional director (compliance) shall select whichever of the foregoing methods of offering the property for sale as is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property*. Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid against the delinquent taxpayer and are superior to the lien of the United

States. All seized property shall be offered for sale “as is” and “where is” and without recourse against the United States. No guaranty or warranty, express or implied, shall be made by the ATF officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied.

(iv) *Terms of payment*. The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(A) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(B) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed 1 month from the date of the sale.

(5) *Method of sale*. The regional director (compliance) shall sell the property either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(A) *Invitation to bidders*. Bids shall be solicited through a public notice of sale.

(B) *Form for use by bidders*. A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(C) *Remittance with bid*. If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is

greater, shall be submitted therewith. (In the case of alternative bids submitted by the same bidder for items of property offered separately, or groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if the bid is \$200 or less. If the highest alternative bid submitted is more than \$200, the bidder shall remit 20 percent of the highest alternative bid or \$200, whichever is greater.) Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(D) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the AFT officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice or sale, or at the time fixed in the announcement of the adjournment of the sale.

(E) *Consideration of bids.* The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in paragraph (c)(4)(ii) of this section. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the ATF officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in

connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(F) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(6) *Payment of bid price.* All payments for property sold under this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property.* Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment.* If payment in full is required upon acceptance of the bid and is not then and there paid, the

ATF officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in 26 U.S.C. 6335(e) and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the regional director (compliance), the sale may be declared by the regional director (compliance) to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in 26 U.S.C. 6335(b), (c), and (e) and this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(26 U.S.C. 6335)

§ 70.182 Disposition of personal property acquired by the United States.

(a) *Sale—(1) In general.* Any personal property (except bonds, notes, checks, and other securities) acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the regional director (compliance) who acquired such property for the United States. United States saving bonds shall not be sold by the regional director (compliance), but shall be transferred to the appropriate office of the Treasury Department for redemption. Other bonds, notes, checks, and other securities shall be disposed of in accordance with instructions issued by the Director.

(2) *Time, place, manner and terms of sale.* The time, place, manner and terms of sale of personal property acquired for the United States shall be as follows:

(i) *Time, notice, and place of sale.* The property may be sold at any time after it has been acquired by the United States. A public notice of sale shall be

posted at the post office nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the regional director (compliance) may use such other methods of advertising as the regional director (compliance) believes will result in obtaining the highest price for the property. The place of sale shall be within the region where the property was originally acquired by the United States. However, if the regional director (compliance) believes that a substantially higher price may be obtained, the sale may be held outside the region.

(ii) *Rejection of bids and adjournment of sale.* The ATF officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the ATF officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must again be given in accordance with paragraph (a)(2)(i) of this section.

(iii) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed \$200.

(3) *Agreement to bid.* The regional director (compliance) may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the regional director (compliance) may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than \$200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(4) *Terms of payment.* The property shall be offered for sale upon whichever